

STATE OF MICHIGAN
COURT OF APPEALS

TRIAD MECHANICAL, INC.,

Plaintiff-Appellant,

v

DANIEL M. RHODES,

Defendant-Appellee.

UNPUBLISHED

December 27, 2005

No. 255785

Oakland Circuit Court

LC No. 2003-052408-NM

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the circuit court's orders granting defendant's motion for summary disposition and denying plaintiff's motion for leave to amend its complaint. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Here, the trial court granted defendant's motion under MCR 2.116(C)(8). When reviewing a motion under MCR 2.116(C)(8), the court accepts as true all factual allegations and any reasonable inferences drawn from them in support of the claim. Summary disposition for failure to state a claim should be upheld only when the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and thus justify recovery. *Stott v Wayne Co*, 224 Mich App 422, 426; 569 NW2d 633 (1997).

To state a claim for legal malpractice, the plaintiff must allege four elements: "(1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) that the negligence was a proximate cause of an injury; and (4) the fact and extent of the injury alleged." *Persinger v Holst*, 248 Mich App 499, 502; 639 NW2d 594 (2001).

The trial court ruled that plaintiff failed to plead the element of causation in fact, i.e., that but for defendant's negligence, plaintiff would have prevailed in the underlying worker's compensation case brought by John Bailey. To prove the causation element of malpractice, the plaintiff must show that it would have prevailed in the underlying action to insure that the plaintiff's damages are not speculative but have a basis in fact. *Coleman v Gurwin*, 443 Mich 59, 64; 503 NW2d 435 (1993). However, the complaint need not specifically allege that but for the attorney's malpractice, the client would have prevailed in the underlying action. "[T]he

allegations of malpractice, coupled with the general allegation of proximate cause, implicitly place upon the plaintiff[] the dual burden of proving, subject to appropriate jury instructions, the underlying claim and the instant malpractice claim, and are sufficient to state the plaintiff[']s malpractice claim.” *Morrison v Franklin*, 655 So 2d 964, 966 (Ala, 1995). Plaintiff alleged that it had a complete defense to Bailey’s worker’s compensation claim and the documents appended to its complaint identified the basis for the defense: that Bailey’s claim was spurious because he had not injured himself at work and, in any case, was still capable of working. Plaintiff further alleged that defendant improperly pressured it to settle the claim because settling was more economically advantageous to the insurer than defending the action. Therefore, plaintiff’s complaint was sufficient to state a claim for malpractice and the trial court erred in granting defendant’s motion for summary disposition on count I of plaintiff’s complaint.

Because we conclude that plaintiff’s complaint sufficiently stated a claim for legal malpractice, we need not address the issue whether the trial court abused its discretion in denying plaintiff’s motion for leave to amend.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood